



DOCKET NO. 71US0

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
PASCAL SIMON, ET AL. : EXAMINER: LAMM
SERIAL NO: 10/662,456 :
FILED: SEPTEMBER 16, 2003 : GROUP ART UNIT: 1617
FOR: WIPE :

DECLARATION UNDER 37 C.F.R. 1.132

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

HIRT Jean-Pascal
I, _____ hereby declare:

1. I am employed by L'ORÉAL as an engineer and have experience in the field of preparing and analyzing cosmetic and/or dermatological compositions.
2. I am familiar with the specification of the above-identified patent application.
3. The pending claims in this application are directed to an article composed of a substrate (such as a non-woven) and a substantially anhydrous composition with at least 10% oil, an emulsifying surfactant and a hydrophilic gelling agent.
4. I understand that one of the issues the U.S. Patent Office has raised relates to the disclosure in McAtee (WO 99/13861). McAtee describes substantially dry cleansing articles prepared by impregnating a woven substrate with an aqueous composition and then drying that article to achieve the desired reduction in water. In addition, McAtee describes including cleansing or foaming surfactant and conditioning agents, such oils. McAtee also describes a number of optional ingredients through several paragraphs in the application.

5. McAtee, however, does not specifically describe using emulsifying surfactants but rather compels the use of lathering surfactants. Indeed, as discussed on page 18, lines 4-7 of the above-identified application, the emulsifying surfactant must be soluble in oil and have an HLB of from 8-14 while the emulsifiers McAtee suggests as optional components only have an HLB of from 1.5 to 6 (see page 38, line 13 of McAtee). Therefore, unlike the articles of McAtee, who aims to achieve a foamed composition after mixing with water, the article composed of a substrate and the composition defined in the application achieve an emulsion when mixed with water giving the consumer a creamy composition for use as described in the application.

6. By including an emulsifying surfactant rather than the lathering surfactant as required by McAtee, one is able to now achieve a dry article giving a creamy and thick composition after it has been wetted (described in the application at page 4, lines 16-20 and page 5, lines 2-3). The resultant composition gives a good feeling to the skin as discussed on page 6, lines 25-27 of the application.

7. To illustrate that lathering surfactants as required by McAtee do not emulsify the composition as the emulsifying surfactants being claimed, the following experiments were carried out by me or under my direct supervision and control.

8. In this experiment, decyl glucoside (which is a lathering surfactant and used in examples 1-10 of McAtee) was used in place of the surfactants in example 1 as described on pages 20-21 of the application. The composition of Example 1 is reproduced again below side-by-side with the comparative example (all amounts are %). It is noted that when the application was translated from French to English, PEG 20 glyceryl triisostearate was listed in both the oil and surfactant portions. However, as it is a surfactant this error is apparent and is not again reflected in the Table.

Compounds	Example 1	Comparative Ex. 1
Oil		
Ethylhexyl palmitate	76.5	76.5
Surfactants		
PEG-20 glyceryl triisostearate	8.5	-
PEG-40 stearate	2	-
Decyl polyglucoside		10.5
Moisturizing active agent		
Glycerin	5	5
Hydrophilic thickener		
Simulgel 600 (with 40 % of polymer) (CTFA name : acrylamide/sodium acryloyldimethyltaurate copolymer/ isohexadecane/polysorbate 80)	8 (i.e. 3,2 % of polymer)	8

9. It was observed that unlike Example 1 in the specification, the composition including the lathering surfactant of McAtee in place of the emulsifying surfactant was heterogeneous and remained insoluble when water was added to the compositions. The heterogeneity of this comparative example 1 is illustrated in the attached Photograph labeled "Photo I."

10. I have discussed above the importance of the HLB of the emulsifying surfactant and to illustrate this, another set of experiments were conducted. In these experiments, a surfactant with an HLB of 5-6 (Arlacel P135—PEG-dipolyhydroxystearate) was used in place of the emulsifying surfactants used in Example 1. A side-by-side alignment of the compositions is presented in the Table below

Compounds	Example 1	Comparative Ex. 2
Oil		
Ethylhexyl palmitate	76.5	76.5
Surfactants		
PEG-20 glyceryl triisostearate	8.5	-
PEG-40 stearate	2	-
Arlacel P135 (PEG-dipolyhydroxystearate)		10.5
Moisturizing active agent		
Glycerin	5	5
Hydrophilic thickener		
Simulgel 600 (with 40 % of polymer) (CTFA name : acrylamide/sodium acryloyldimethyltaurate copolymer/ isohexadecane/polysorbate 80)	8 (i.e. 3,2 % of polymer)	8

11. After adding water to these compositions, it was observed that unlike Example 1 from the application, the comparative example having a surfactant with an HLB of 5-6, yielded a composition with the aqueous and oil phases separated. The Example 1 composition, in contrast, had a milky appearance when water was added. The heterogeneity of the Comparative Example 2 composition is shown in the attached photograph labeled "Photo II" and the milky appearance of the Example 1 composition is shown in the photograph labeled as "Photo III."

12. Further illustrative of these differences, the Example 1 and Comparative Example 2 compositions were viewed by microscopy (shown in the attached "photo IV"). In this comparison, the Example 1 composition was observed to be homogeneous (lower picture)

whereas the Comparative Example 2 composition (upper two pictures) exhibited clear heterogeneity between the aqueous and oil phases could be observed.

13. These results are important because they demonstrate to prepare a dry article which yields a creamy and thick composition after the addition of water, not only is the type of surfactant important (emulsifying vs. lathering) the HLB of the emulsifying surfactant is important as well. As evident in the data and the discussion provided in the specification, the effect is not merely one of degree but a different effect altogether. That is with the emulsifying surfactants having an HLB of from 8 -14, one can achieve this desired result whereas with other surfactants this was not achievable.

14. As McAtee emphasizes the importance of including lathering surfactants and makes only a passing mention at optional ingredients such as emulsifiers, and, in fact, does not mention the importance of the HLB, I find that the data presented above surprising in view of this document.

15. The undersigned declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believe to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

HIRT Jean Pascal
Name


Signature

10/02/07
Date